IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.366 OF 2006

IN

SUMMARY SUIT NO.1219 OF 2006

Hemant Nanji Charania ...Plaintiff

v/s

Vinod M. Patel ...Defendant

Mr S.M. Shettigar for Plaintiff.

Mr B.G. Saraf for Defendant.

CORAM : D.K. DESHMUKH J.

DATE : 5TH DECEMBER 2006.

P.C. :-

1. The plaintiff has filed this suit on the basis of promissory note dated 16th April 2003 which shows that the defendant had taken a loan of Rs.6,00,000/- from the plaintiff. The plaintiff also relies on an undertaking dated 24th August 2004 which according to the plaintiff, is again signed by the defendant where he acknowledged that he has taken loan of Rs.6,00,000/- from the plaintiff. According to the plaintiff, the amount was not refunded, therefore demand notice was issued by the plaintiff dated 30th September 2005. Despite receipt of that notice by the defendant, according to the plaintiff, there is no reply from the defendant. The defence of the defendant is that the plaintiff is a very good friend of the defendant, that he was in need of money in April 2002, he asked for loan of Rs.20,000/- to the plaintiff. The plaintiff advanced the loan to him but made him sign a blank stamp paper. According to the defendant, he signed the blank stamp paper. Thus, the defendant admits his signature on the promissory note. According to the defendant, however, he never signed the undertaking dated 24th August 2004. According to the defendant, his signature on the undertaking is forged by the plaintiff. So far as the demand notice is concerned, according to the defendant,

that demand notice was received by his daughter who according to him is 12 years of age, but she never handed over the notice to the defendant and therefore, the defendant did not receive that notice. The plaintiff has filed rejoinder, the defendant has also filed sur-rejoinder. I have heard learned counsel appearing for both the sides at length. In my opinion, the defence put up by the defendant is incapable of being accepted. Assuming the case put up by the defendant as it is that in April 2004 he needed Rs.20,000/- as loan, the plaintiff advanced him that amount but forced him to sign a blank stamp paper. The behaviour of any ordinary prudent man would be to refund that amount as early as possible and to retrieve the alleged blank stamp paper that he had signed. The defendant in his affidavits nowhere stated as to whether he refunded the amount of Rs.20,000/- which admittedly he had taken from the plaintiff. On asking about it, the learned counsel appearing for defendant stated that the defendant has never refunded the amount of Rs.20,000/- which was admittedly taken by him as loan. The leaned counsel appearing for defendant is not in a position to explain why if the amount was admittedly taken and if the plaintiff was very close friend of the plaintiff, he did not refund the amount. The case put up by the defendant for not replying the demand notice also does not inspire any confidence. It is hard to

believe that the daughter of the defendant who received the notice from the postman but could not deliver it to any adult member of the family. Therefore, leaving aside the document of undertaking, the signature thereon which according to the defendant is forged and fabricated, in my opinion, there is nothing on record to discredit the document of promissory note. The defence put up by the defendant is totally unacceptable, in fact it does not amount to a defence in the eyes of law. The defendant has no defence, therefore he is not entitled to leave to defend the suit. Summons for judgment therefore deserves to be allowed, it is accordingly allowed. Suit of the plaintiff is decreed in terms of prayer clause of the suit. Refund of court fees as per rules.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.